

David R. Wright (Bar No. 5164)

dwright@mabr.com

Kirk R. Harris (Bar No. 100221)

kharris@mabr.com

Jared J. Braithwaite (Bar No. 12455)

jbraithwaite@mabr.com

MASCHOFF BRENNAN

201 South Main Street, Suite 600

Salt Lake City, UT 84111

Telephone: (435) 252-1360

Facsimile: (435) 252-1361

Attorneys for Plaintiff LIFETIME PRODUCTS, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION**

LIFETIME PRODUCTS, INC.,
a Utah corporation,

Plaintiff,

v.

RUSSELL BRANDS, LLC
D/B/A SPALDING,
a Delaware limited liability company,

Defendant.

**JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT**

Civil No. 1:12-cv-00026-DN-EJF

District Judge David Nuffer

Magistrate Judge Evelyn Furse

(Jury Demanded)

In accordance with the scheduling order,¹ plaintiff Lifetime Products, Inc. (“Lifetime”) and defendant Russell Brands, LLC (“Russell”) set forth their Joint Claim Construction and Prehearing Statement with regard to claim terms from U.S. Patent Nos. 7,749,111 (“111 Patent”); 8,033,935 (“935 Patent”); and 8,038,550 (“550 Patent”) (collectively the

¹ Docket No. 196.

“patents-in-suit” or “asserted patents”) to be construed by the Court during the February 5, 2014 claim construction hearing. For the convenience of the Court, the format of this Joint Statement is based on the requirements set forth in District Judge Tena Campbell’s Patent Rule 8.C.

Agreed Constructions

The parties agree and jointly propose that the Court construe the claim terms identified in Exhibit A with the corresponding constructions identified therein.

Disputed Constructions

Exhibit B lists each disputed term and each party’s respective proposed construction of that term. Exhibit C consists of Lifetime’s intrinsic and extrinsic evidence supporting Lifetime’s proposed constructions or contradicting Russell’s constructions for the disputed terms. Exhibit D consists of Russell’s intrinsic and extrinsic evidence supporting Russell’s proposed constructions, supporting Russell’s indefiniteness positions, or contradicting Lifetime’s constructions for the disputed terms.

Nature and Form of the Claim Construction Hearing

The parties anticipate that, as presently scheduled, a full day will be necessary for the Claim Construction Hearing. The parties propose that expert testimony be presented through declarations and/or deposition testimony. However, if desired by the Court, the parties will be prepared to call their designated expert witnesses for the purposes of claim construction to testify regarding (1) the level of a person of ordinary skill in the art, (2) the parties proposed claim constructions, and (3) the definiteness or indefiniteness of certain claim limitations.

Prehearing Conference

The parties believe that a prehearing conference may be beneficial to discuss whether expert testimony will be presented via declarations and/or deposition testimony or through live witness testimony.

Dated: October 10, 2014

MASCHOFF BRENNAN

BRADLEY ARANT
BOULT CUMMINGS, LLP

By: /s/ Kirk R. Harris

David R. Wright
Kirk R. Harris
Jared J. Braithwaite

Attorneys for Plaintiff
LIFETIME PRODUCTS, INC.

By: /s/ Jeff D. Dyess

Nathan W. Johnson
Jeff D. Dyess
Jacob W. Neu

Attorneys for Defendant
RUSSELL BRANDS, LLC